



State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

m/049/021

Michael O. Leavitt
Governor

Robert L. Morgan
Executive Director

Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

(801) 538-5340 telephone

(801) 359-3940 fax

(801) 538-7223 TTY

www.nr.utah.gov

January 9, 2003

Sheriff James O. Tracy
Utah County Sheriff's Office
51 South University
P.O. Box 1547
Provo, Utah 84603

Attention: Civil Division

Dear Sheriff Tracy:

Would you please obtain personal service of the attached letter on the addressee in Payson, and direct your return (identifying the document served) to my attention at 1594 West North Temple, Suite 1210, Salt Lake City, Utah 84116.

Please serve Mr. Powell in person and not by leaving a copy with any other person, either at his business or residence.

Thank you in advance for your assistance and cooperation in serving this document in behalf of the Utah Division of Oil, Gas and Mining.

Sincerely,

Joelle Burns
Engineering Tech

Enclosure: Letter to Dan Powell
O:\M049-Utah\M049021-CherryHill\final\Sheriff-service.doc



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
(801) 538-5340 telephone
(801) 359-3940 fax
(801) 538-7223 TTY
www.nr.utah.gov

Michael O. Leavitt
Governor

Robert L. Morgan
Executive Director

Lowell P. Braxton
Division Director

January 9, 2003

HAND DELIVERED
via Utah County Sheriff's Office

Dan Powell
Emery Industrial Resources
262 South 800 West
Payson, Utah 84651

Re: **Proposed Agency Action**, Emery Industrial Resources, Cherry Hill Park Mine, M/049/021, Utah County, Utah

Dear Mr. Powell:

This letter is sent to formally notify you that the Notice of Non-Compliance issued by the Division on May 14, 2002 for your Cherry Hill Park Mine (M/049/021), **has not** been completely mitigated in a timely manner. Accordingly, the Division hereby notifies Emery Industrial Resources ("EIR") of its intention to take the Agency Action set forth in this notice:

Location of Mine Site

The Cherry Hill Park Mine is located in the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 36, Township 11 South, Range 8 East, SLBM, Utah County, Utah.

Unfulfilled Mitigation Requirements

Emery Industrial Resources has failed to provide an acceptable form of reclamation surety to the Division in the amount of \$43,500.00 within thirty (30) days of its receipt of the May 14, 2002 Notice of Non-Compliance. Under section 40-8-14 of the Utah Mined Land Reclamation Act and Rule R647-4-113, an operator must provide adequate reclamation surety before expanding operations beyond the five (5) acre threshold for a small mine.

The Division has allowed EIR additional time beyond the timeframe specified in our May 14th Non-Compliance Notice, due to apparent difficulties you were having in securing the reclamation surety. Over the past several months, you have verbally advised Division staff on several occasions, that you would be delivering the required reclamation surety to our office within the next few days. The surety remains outstanding to date.

Page 2
Dan Powell
M/049/021
January 9, 2003

Proposed Agency Action

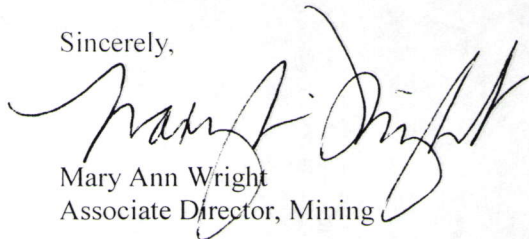
The Division hereby provides notice to EIR of its decision to **deny** approval of the Notice of Intention to Commence Large Mining Operations (originally submitted November 14, 1994), and all subsequent modifications and refinements made to the plan since that date. The Division also notifies EIR of its intention to withdraw acceptance of the Notice of Intention to Commence Small Mining Operations, submitted July 8, 1992, and to seek an order from the Board of Oil, Gas & Mining requiring the operator to commence reclamation of existing mining-related disturbances according to a schedule determined by the Division.

In accordance with the requirements of the *Utah Mined Land Reclamation Act, Title 40-8-16(3)*: *Approval of a notice of intention may not be refused, withheld, nor withdrawn by the Division until the operator, who holds or has applied for such approval, has had an opportunity to request a hearing before the Board, present evidence, cross-examine, and participate fully in the proceedings. Based on the record of the hearing, the board will issue an order concerning the refusal, withholding, or withdrawal of the notice of intention. If no hearing is requested, the Division may refuse, withhold, or withdraw approval of a notice of intention.*

Therefore, you are hereby advised of your right to appeal this Agency Action and request a formal hearing on the matter. In order to do so, you must file a written request to appeal within 10 days of your receipt of this notice. Your failure to file such a request may preclude you from further participation, appeal, or judicial review with regard to this action. If you do not appeal this proposed Agency Action, the Division's decision will become final and we will seek an Order from the Board of Oil, Gas and Mining, as described above. Please contact Mary Potter, Administrative Secretary, at (801) 538-5327, if you wish to exercise your right to appeal this decision before the Board of Oil, Gas and Mining. She can provide you with appropriate guidance and assistance in preparing your formal Hearing request.

If you choose to resolve this matter **without** a formal hearing, you may schedule an informal conference with the Division Director. To do so, please contact Vicki Southwick, Executive Secretary, at (801) 538-5304, within 10 days of your receipt of this notice. If you have any questions regarding this notice you may contact me at (801) 538-5306, Wayne Hedberg at (801) 538-5286, or Lynn Kunzler at (801) 538-5310.

Sincerely,



Mary Ann Wright
Associate Director, Mining

jb

Attachments: Supplemental information
cc: Buck Rose, Utah County
Steve Alder, Attorney General's Office

O:\M049-Utah\M049021-CherryHill\Non Compliance\11-13-2002 agencyaction.doc

Supplemental Information – Proposed Agency Action

Emery Industrial Resources
Cherry Hill Park Mine
M/049/021

Background Information

Summary of Non-Compliance

On May 14, 2002, the Division issued a non-compliance for the Cherry Hill Park Mine, citing:

1. The site had expanded beyond the 5-acre limit of a small mining operation, to 20.6 acres, after the operator had been notified that he must first file a Notice of Intention to conduct Large Mining Operations with the Division and have Division **approval** before proceeding beyond 5 acres.
2. The operator had not posted an adequate form or amount of reclamation surety as required by law; and
3. The operator had not provided the technical information required to approve a Large Mining Notice of Intention.

Summary of Mitigation Required

1. Emery Industrial Resources was to submit an acceptable reclamation surety to the Division in the amount of \$43,500.00 within 30 days.
2. Emery Industrial Resources was to suspend all mining operations and removal of materials from the Cherry Hill Park Mine until the reclamation surety is received and formally accepted by the Division.
3. Emery Industrial Resources was to submit a written response to the outstanding technical deficiencies within 10 days.

Status of Mitigation Work

1. Emery Industrial Resources ***has not submitted*** an acceptable reclamation surety to the Division in the amount of \$43,500.00, as required. The operator has provided numerous verbal promises to provide this surety, but has failed to follow through to date.
2. Mining operations at the Cherry Hill Park Mine have been suspended by the operator. *This satisfies mitigation requirement #2.*
3. The Division received a written response to the outstanding deficiencies on June 6, 2002. *This satisfies mitigation requirement #3.*